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EXAMINER	
DUFFY, DAVID W	
ART UNIT	**PAPER NUMBER**
3714	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	09/941,251	BANERJEE ET AL.	
	Examiner	Art Unit	
	David W. Duffy	3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 December 2006*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8 and 11-51* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8 and 11-51* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Status of Claims

1. This office action is in response to the amendment filed December 5, 2006 in which the applicant amends claims 1, 23, 28, 29, 46 and 47. Claims 1-8 and 11-51 are pending.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 17 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim states that timing data is monitored somehow and then only sent to the proctor device when in excess of the expected response time. This is contradictory to the parent claim 6, which states that the proctor device does the time data monitoring. As no other item is stated to be monitoring the data as well as the contradictory nature of the claim it is indeterminate as to what is occurring. Claim 18, which depends from claim 17, inherits this deficiency as well.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 23, 24, 28, 47 and 48 are rejected under 35 U.S.C. 102(b) as being anticipated by Thomas (US 5885087).

6. In regards to claims 1, 23 and 47, Thomas '087 discloses a computerized testing device that conducts testing for a user whereby a question is presented to the user and the time taken by the user to answer the question is tracked and displayed and may be compared to a predetermined time (2:5-20 and 4:45-65). Examiner contends that the constant display of the elapsed time constitutes an alert and that the predetermined time for a question used to compare to the elapsed time disclosed in the reference would constitute an alert schedule.

7. In regards to claims 2, 24 and 48, Thomas '087 discloses that the system is a computer program on a computer (3:53-65)

8. In regards to claim 28, Thomas '087 discloses the features described above for claims 1 and 23 and further describes that the computer used is preferably a microcomputer that also may operate over a network to the user (3:60-65). Computers of the type disclosed would inherently have a bus and must also have a communications system in order to be operable over a network. The reference further discloses memory for storing the program (figure 1, element 10).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 3 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas '087 in view of O'Connor et al. (US 6032141).

11. Thomas '087 discloses the test question timing system disclosed above. Thomas '087 further discloses that a networked computer may be used to implement the system (3:60-65) and further discloses that the software may be used on a variety of operating systems (4:27-30). Thomas '087 lacks in disclosing the use of applets for the alert generation.

12. In an analogous computerized education system, O'Connor '141 discloses the use of JAVA applets for client side processing of an interactive education system (10:17-50). One skilled in the art would recognize the stated advantages of using JAVA applets to provide a simple, object-oriented, distributed, interpreted, robust, secure, architecture-neutral, portable, high-performance, multithreaded, dynamic, buzzword-compliant, general-purpose program.

13. Therefore it would have been obvious to one skilled in the art at the time to use the JAVA applets of O'Connor '141 to implement the networked testing system of Thomas '087 in order to reduce development costs by providing the same product to a broad customer base regardless of their computing platform.

14. Claims 4, 5, 26, 27, 49 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas '087.

15. Thomas '087 lacks in disclosing the billing of clients for providing the timing service or based on the number of test takers. However, examiner takes OFFICAL NOTICE that billing for a service is notoriously well known in the art of testing.

Independent testing centers (i.e. Prometric, ETS, independent proctors, etc.) commonly charge the test provider for their testing and/or monitoring services. Furthermore, it would be obvious to charge based on the number of test takers, as more test takers would necessitate more work for the testing center and proctors.

16. Claims 6-8, 11-13, 16, 19, 20, 29-36, 39-43 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas '087 in view of Hoehn-Saric et al. (US 5915973).

17. In regards to claims 6, 11, 29, 32-34 and 46, Thomas '087 discloses the testing system described above for claim 1 where the system may operate over a network, which examiner is interpreting to be an interface, with a client (3:63-65). Thomas '087 lacks in disclosing the use of instant messaging. However, Hoehn-Saric '973 et al teaches that the administrator of a test has great flexibility in sending and receiving messages associated with the administration of a test (Col 6 and 8). This flexibility may include sending and responding to messages with the test product users as quickly as the physical interconnection is capable of processing and sending them, making them "instant messages". Therefore, it would have been obvious to one of ordinary skill in the art to provide test examination system as disclosed by Thomas '087 with messaging capability to take full advantage of the speed of the remote connection with the test product user to provide the ability to send and receive instant messages as taught by Hoehn-Saric for the purposes of distributing test evaluations to users in a more timely fashion.

18. In regards to claims 7, 8, 30 and 31, Thomas '087 in view of Hoehn-Saric '973 fails to disclose the billing of test providers or test takers. However, examiner takes OFFICAL NOTICE that billing for a service is notoriously well known in the art of testing. Independent testing centers (i.e. Prometric, ETS, independent proctors, etc.) commonly charge the test provider for their testing and/or monitoring services. Furthermore, they also may charge the test taker for the services, as is the case for tests such as the patent bar.

19. In regards to claims 12 and 35, Thomas '087 discloses that the score for the test is stored in permanent storage (6:38-41).

20. In regards to claims 13 and 36, the combination made for ref 6 does not explicitly state that the test developer and administrator are different entities. However, examiner takes OFFICIAL NOTICE that such an arrangement would have been obvious, as it is well known in the prior art. Prometric, ETS, colleges and other independent test administrators commonly provide testing services to test takers of tests developed by the College Board and various certification bodies.

21. In regards to claims 16 and 39, Thomas '087 in view of O'Connor '141 lacks in disclosing the billing of clients for providing the timing service or based on the number of test takers. However, examiner takes OFFICAL NOTICE that billing for a service is notoriously well known in the art of testing. Independent testing centers (i.e. Prometric, ETS, independent proctors, etc.) commonly charge the test provider for their testing and/or monitoring services. Furthermore, it would be obvious to charge based on the

number of test takers, as more test takers would necessitate more work for the testing center and proctors.

22. In regards to claims 19 and 42, Thomas '087 discloses the use of predetermined data with which to compare question timing (4:56-60) which examiner interprets to be analogous to a question-timing database.

23. In regards to claims 20 and 43, Examiner contends that the constant display of the elapsed time constitutes an alert and that the predetermined time for a question used to compare to the elapsed time would constitute an alert schedule.

24. In regards to claims 40, Thomas '087 in view of Hoehn-Saric '973 discloses the system of claim 29 above where the alert of the elapsed time is constant and may be compared to a predetermined value (4:45-60). There is no indication that the system would not be capable of providing the data on a periodic basis in lieu of the constant update disclosed.

25. In regards to claim 41, Thomas '087 discloses that the question timing may be compared to predetermined data. Previous timing data for the same question would be an obvious type of data to use as a predetermined time to compare the current time against.

26. Claims 14, 15, 21, 22, 37, 38, 44 and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thomas '087 in view of Hoehn-Saric '973 as applied to claim 6 above, and further in view of Kershaw et al. (US 5827070).

27. In regards to claims 14 and 37, Thomas '087 in view of O'Connor '141 discloses the combination as made for claims 6 and 29 above. Thomas '087 further discloses the

maintenance of testing records and comparison to ideal timing values (6:37-50 and 4:53-60). The combination made lacks in disclosing session identification or proctor identification to match or deliver data.

28. In an analogous testing system, Kershaw '070 discloses a the collection of statistical data on all examinees taking a certain test (2:8-16) as well as the recording of a test program id, registration id, test center id, and workstation id for each test taker in order to provide an audit trail (73:27-74:26). One skilled in the art would recognize the advantage of maintaining detailed records on test takers to provide accurate records to ensure that no cheating or errors occurred.

29. Therefore it would have been obvious to one skilled in the art at the time to combine the test administration system of Kershaw '070 with the timing and messaging system made from the combination made for claim 6 to provide a test timing system for a number of users while maintaining accurate and detailed records of the test takers.

30. In regards to claims 15 and 38, the combination made above for claim 14 discloses the tracking of workstation and test id for each test taker. The combination made lacks in explicitly stating that the timing data is sent to the proctoring device based on a proctor id. However, it would have been obvious to base the sending of timing data on proctor id as testing centers commonly provide multiple tests simultaneously and the individual proctors would only need the timing data for the tests they are monitoring thus reducing the data traffic overhead.

31. In regards to claims 21 and 44 and 22 and 45, the combination made above for claims 19 and 42 and 6 and 29 respectively discloses the retention of records to predict

test taker performance. The combination made lacks in disclosing that the information would be used in future tests.

32. In an analogous testing system, Kershaw '070 discloses the retention of testing data for the creation of future tests (2:8-16). One skilled in the art would recognize the advantage of using the elapsed time of particular test questions in addition to the answers given in determining the difficulty of a question.

33. Therefore it would have been obvious to one skilled in the art at the time to combine the test question timing data of the combination of Thomas '087 and O'Connor '141 with the analysis of test data presented in Kershaw '070 in order to better determine and tune the difficulty of standardized tests.

34. Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kershaw '070 in view of Thomas '087 and Hoehn-Saric '973.

35. Kershaw '070 discloses a test administration system that records statistical data about test takers and identification system about each test taker (2:8-16 and 4:3-5:2). Data recorded includes session identification, test identification with several tests listed suggesting the capability for multiple tests to be presented by the system (73:35-74:27). While Kershaw '070 does track test results for the creation of performance statistics, it lacks in explicitly stating the tracking of question timing data.

36. In analogous testing system, Thomas '087 discloses the tracking of question timing data and the comparison to predetermined time data (2:5-20 and 4:45-65). One skilled in the art would recognize the advantage of including time data in the statistics gathered by Kershaw '070 in order to more accurately determine overall difficulty of a

question as well as the notification feature in order to provide to the test takers time indication as standardized tests are time limited and keeping track of user's time is very important (4:49-51).

37. Therefore it would have been obvious to one skilled in the art at the time to combine the timing system of Thomas '087 with the test administration system of Kershaw '070 in order to provide more accurate test statistics and ensure test takers were adequately informed of the time taken on a question.

38. The combination made would provide a constant alert of the time, but would be capable of providing time updates periodically instead.

39. The combination made lacks in explicitly stating the use of instant messaging.

40. In an analogous test administration system, Hoehn-Saric '973 discloses that the administrator of a test has great flexibility in sending and receiving messages associated with the administration of a test (Col 6 and 8). This flexibility may include sending and responding to messages with the test product users as quickly as the physical interconnection is capable of processing and sending them, making them "instant messages". Therefore, it would have been obvious to one of ordinary skill in the art to provide test examination system as disclosed by Thomas '087 with messaging capability to take full advantage of the speed of the remote connection with the test product user to provide the ability to send and receive instant messages as taught by Hoehn-Saric for the purposes of distributing test evaluations to users in a more timely fashion.

Response to Arguments

41. Applicant's arguments with respect to claims 1-51 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

42. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 3829987 to Rich drawn to an exam pacing device. US 5796681 to Aronzo also drawn to a test pacing device.

43. It is noted that applicant has a substantial number of claims depicting substantially similar subject matter. It is not clear why, given the description of the applicant's invention, so many claims are needed. Furthermore, the substantial number of claims may be obscuring potential novel features that may lie within applicant's disclosure and raises doubt as to what applicant truly considers as the novel feature(s) of the disclosed invention. Although not required, Applicant is respectfully requested to clarify/limit the claims to more clearly define the invention as a means to potentially expedite prosecution of this application.

Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue

requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David W. Duffy whose telephone number is (571) 272-1574. The examiner can normally be reached on M-F 0800-1630.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

DWD

Ronald Laneau
Primary Examiner
4/26/07